

REMARKS

Claims 1, 5-9 and 12-24 are pending in the application. Claims 21-23 are withdrawn from consideration. Claims 1, 5-9, 12-20 and 24 are rejected.

Claim Rejections – 35 U.S.C. § 103

The Examiner has rejected Claims 1, 5-9, 12-15 and 24 under 35 U.S.C. 103(a) as being unpatentable over Burns et al. (U.S. Patent No. 5,284,133) in view of the Drug Information Handbook, 2nd edition. The Examiner has rejected Claims 16-17 and 19-20 under 35 U.S.C. 103(a) as being unpatentable over Burns et al. (U.S. Patent No. 5,284,133) in view of the Drug Information Handbook, 2nd edition, in further view of Nguyen et al. (U.S. Patent No. 7,040,314). The Examiner has rejected claims 16-18 under 35 U.S.C. 103(a) as being unpatentable over Burns et al. (U.S. Patent No. 5,284,133) in view of the Drug Information Handbook, 2nd edition, in further view of Rabinowitz et al. (US 2004/0009128). Applicants reiterate the arguments presented in the office action responses submitted on July 8, 2008, and February 17, 2009.

Burns et al. does not teach that loxapine hydrochloride was a known headache analgesic. The Examiner has referred to a passage in Burns wherein the class of “neuroleptics” is the first drug class listed in the passage cited by the Examiner that includes loxapine hydrochloride. (Burns et al. Column 7, lines 12-23.) This passage does not disclose loxapine as a headache analgesic, it merely lists loxapine in its known role as an example of a neuroleptic. The Drug Information Handbook, 2nd edition, cited by the Examiner, for example, refers to loxapine’s “onset of neuroleptic effect” (Drug Information Handbook, at 555;). Further, no other reference has been found as prior art to suggest that loxapine hydrochloride was a known headache analgesic. Applicants believe the Examiner has misinterpreted the disclosure of Burns et al.

Reconsideration is respectfully requested.

Double Patenting

Claims 1, 16-17 and 19 are rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 7, 9, 10, 12 and 13 of U.S. Patent No. 6,716,416.

Claims 1 and 16-19 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 12, 15, 16 and 18 of copending Application No. 10/633,876. Claims 1 and 16-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 1 and 7-9 of copending Application No. 10/633,877. Claims 1 and 5-15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 1 and 15 of copending Application No. 10/719,763. Claims 1 and 5-15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 15 of copending Application No. 11/346,548.

Applicants hereby agree to file appropriate terminal disclaimers in this application with respect to subject matter ultimately found to be patentable.

Conclusion

Applicants appreciate the Examiner's careful and thorough review of the application. Applicants request the Examiner to allow the application. In the event the Examiner believes a telephonic discussion would expedite allowance or help to resolve outstanding issues, prosecution of the application, then the Examiner is invited to call the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to Deposit Account No. 19-5117, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to Deposit Account No. 19-5117.

Respectfully submitted,

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/Katherine Lobel-Rice/
Katherine Lobel-Rice, #58,079
Swanson & Bratschun, L.L.C.
8210 SouthPark Terrace
Littleton, Colorado 80120
Telephone: (303) 268-0066
Facsimile: (303) 268-0065